

David J. Bradley, Clerk

The court **OVERRULES** Plaintiffs' objection to a passage in the Magistrate Judge's Memorandum, Recommendation, and Order relating to the War Coverage Endorsement. Plaintiffs stated in their amended complaint that the underlying lawsuit did not "make any

allegations of 'war.'"¹ Plaintiffs' response referred to the War Coverage Endorsement as irrelevant, stating:

Because Hays asks for summary judgment on all of Orion's claims, what matters here are the claims in Orion's Complaint. Orion alleged that Hays breached its duties to Orion if ACE was not required to defend and/or indemnify Orion in the Santiago Lawsuit for any reason. Doc. No. 17 ("Amended Complaint"), ¶¶ 7, 107-114. This Court held that the Policy's coverage territory encompassed areas that include Algeria, so that issue is now irrelevant. See Doc. No. 42 (the "Duty to Defend Order") at 2.²

The court therefore concludes that Plaintiffs have waived any reliance on the War Coverage Endorsement.

It is therefore **ORDERED** that the Memorandum and Recommendation is hereby **ADOPTED** by this court.

SIGNED at Houston, Texas, on this the 20th day of March, 2018.



SIM LAKE
UNITED STATES DISTRICT JUDGE

¹First Amended Complaint, Docket Entry No. 17, p. 12.

²Plaintiffs' Response to The Hays Group, Inc.'s Motion for Summary Judgment, Docket Entry No. 75, p. 18.